IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH

F.A.O. No.1083 of 1987 (O&M)
Date of Decision:- 23.08.2006

Pritam Kaur etc. ....Appellants.

through
Mr.S.S.Brar, Advocate

vs.

Punjab Tractor Ltd. & ors. ....Respondents

through
Mr.Inderjit Sharma, Advocate

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT

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SURYA KANT, J.

Aggrieved at the award dated 31.3.1987 passed by the Motor Accident Claims Tribunal, Ropar, whereby their claim for the award of compensation due to death of Amar Nath in a motor vehicular accident, has been dismissed except that a sum of Rs.15,000/- has been awarded as compensation for no fault under Section 92 A (2) of the Motor Vehicles Act, 1988, the claimants have filed this appeal.

Briefly stated, the facts are that on 31.7.1986 at about 5.00 P.M., Amar Nath was coming from Kharar side in Car No.CHB 62 driven by Dev Raj. Kishore Kumar was also accompanying them. When their car reached near Dara Studio,in S.A.S.Nagar, Mohali, a jeep bearing No.CHA 2741 allegedly driven by Khajan Singh-respondent No.2 in a rash and negligent manner, came from the opposite side and struck in the car as a result of which Amar Nath received multiple injuries. He was removed to

Post Graduate Institute of Medical Science (PGIMS) at Chandigarh but succumbed to his injuries on 6.8.1986. Alleging that the accident in question was caused solely due to rash and negligent driving of the jeep driver (Khajan Singh), the appellants, who are widow, a major unmarried daughter, minor sons/daughter and parents filed the claim petition claiming a compensation of Rs.4 lacs. The mother of the deceased, however, died during the pendency of the claim petition.

The claim petition was contested by respondent Nos.1 and 2, who filed a joint written statement and took the plea that in fact no accident had taken place. Respondent No.3-the Insurance company also filed a separate written statement with a preliminary objection that the driver of the car was not acting in the course of his employment; he was not holding a valid driving licence and was driving the vehicle with unauthorized persons, therefore, no liability could be fastened upon the Insurance company.

On the basis of the pleadings of the parties, the following issues were framed:-

> "1.Whether Amar Nath s/o Mansha Ram, died due to rash and negligent driving by Khajan Singh, respdt. With jeep No.CHA-2741 and car No.CHB 62? OPA
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> 2.Whether the claimants are dependants of the deceased Amar Nath and entitled to claim compensation? If so from which of the respondents and to what amount?OPP
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> 3.Whether the petition is bad for non-joinder of necessary party, if so, to what effect?OPD
>
> 4.Relief."

While deciding issue No.1, the learned Tribunal though held

that deceased Amar Nath and Dev Raj (the driver of the car) did receive injuries in an accident, however, the said accident was not caused with the jeep driven by Khajan Singh-respondent No.2. The Tribunal took the view that Dev Raj and Kishore Kumar both eye-witnesses, who appeared on behalf of the claimants were interested witnesses being brother and a relative, respectively of the deceased and the fact that the driver of the jeep-Khajan Singh did not receive any injury in the accident clearly suggests that the jeep was already parked and the car which came from the side of Belongi skidded due to rain and struck against the jeep. The Tribunal, thus, concluded that deceased Amar Nath did not die in the accident due to any rash or negligent driving of the jeep driven by respondent No.2. Consequently, the claim petition was dismissed except that no fault claim of Rs.15,000/- has been awarded to the appellants.

Aggrieved, the claimants have filed this appeal.

The fate of the claim petition rests exclusively upon the issue as to whether the accident in question was caused due to rash and negligent driving of the jeep driver-respondent No.2 or not? In order to answer this question, the pleadings and the evidence led by the parties in support thereto, requires are to be looked into. In para 24 of the claim petition, the claimant-appellants have made the following specific averments:

> "That on 31.7.86 at about 5.00 P.M. Sh.Amar Nath was coming from Kharar side in Car No.CHB-62 driven by Sh.Dev Raj along with Kishore Kumar and other after placing order for the purchase of wood at vill.Balongi. When the car no.CHB-62 driven by Sh.Dev Raj was near Dara Studio after crossing the round about,

> Jeep No.CHA-2741 driven by Sh.Khajan Singh respdt.no.2 rashly and negligently came from the opposite side and struck in the car, as a result of which Amar Nath received very serious injuries. The car was going at a normal speed. The accident has taken place due to the rash and negligent driving of jeep driver. Sh.Amar Nath was removed to PGI and was admitted there, where he died on 6.8.86."

Para 24 of the joint written statement filed by respondent Nos.1 and 2 is only to the effect "that this para is incorrect and denied." Similarly, the respondent-Insurance company in para 24 of its written statement has averred that:-

> "24. That this para is incorrect. No accident had taken place as alleged. If accident is proved, the same happened due to sole negligence of driver of car No.CHB-62."

It may, thus, be seen that the respondents have come up with a totally evasive plea suggesting that no accident had taken place.

As far as the documentary evidence is concerned, the appellants have placed on record copy of the F.I.R. (Ex.P-1), post-mortem report of Amar Nath (Ex.P-2) and the record of the PGI MS, Chandigarh (Ex.P3). On a combined reading of these documents, it stands proved beyond doubt that car No.CHB-62 in which deceased Amar Nath was travelling did meet with an accident in which he received injuries and was rushed to the PGI MS "for the accidental injuries". He, however, died due to those injuries.

Coming to the oral evidence, it may be mentioned that the accident was witnessed by Kishore Kumar (PW-2) as well as Dev Raj (PW-3), who also received some injuries. It is true that Dev Raj is stated to be brother of the deceased and Kishore Kumar is also closely related to the deceased. However, their statements, *per se*, cannot be discarded on this account alone. Travelling together by family members/relations is quite natural and it would be too imaginative to believe that they did not witness the occurrence and/or were planted later on. In their depositions both Kishore Kumar and Dev Raj have categorically stated that the car was on the correct side and was being driven by Dev Raj at a normal speed and it was the jeep which came from the wrong side and struck against the car.

In order to test the veracity of both the witnesses, I have also gone through the photographs taken immediate after the accident and which are on the record of the Tribunal. If one looks at the photographs, only two possible conclusions can be drawn, i.e. either the jeep came from the wrong side and struck against the car and the driver of the car was taken by surprise, or that the jeep came from the wrong side and struck against the car because, it struck against the left side rear window of the car resulting into serious injuries to deceased, who was sitting on the rear side. Had it been a case of car coming from the wrong side and striking against the jeep, the front side of the car including its front window on the left side would have been damaged. The photographs do not depict and support this 2nd possibility. Even if the reasoning given by the Tribunal, which is neither pleaded nor proved by the respondents, is taken to its logical conclusion that the car got skidded due to rain and struck against the jeep, yet it cannot be denied that the jeep was wrongly parked in a totally unauthorized manner.

If the logic given by the Tribunal is correct, it would mean that the jeep was parked on the road itself, leaving no scope for the other vehicles to cross-over it. However, in that event also the jeep driver , namely, respondent No.2 appears to have acted in a gross negligent manner.

As observed earlier, the first possibility, namely, the jeep driven by respondent No.2 coming from a wrong direction and then striking against the rear left side of the car appears to be more plausible and is also strengthened by the oral evidence on record. It inspires confidence is accordingly accepted.

As a result of the above discussion, the findings returned by the Tribunal under Issue No.1 are reversed and it is held that the accident in question was caused due to rash and negligent driving of respondent No.2-the jeep driver.

The question now arises as to what compensation should be awarded to the appellants? Appellant No.1-the widow of the deceased appeared as PW-1 and deposed that her husband was running a flour mill and in addition he was also doing the business of farming, spinning machine and oil crusher. According to her the average income of the deceased was Rs.2500/2600 per month. In her cross-examination, she is categoric in pointing out that the deceased was owner of 4-5 acres of land and he had engaged a servant to run the flour mill. The aforesaid stand taken by appellant No.1 has been supported by PW-2 and PW-3 also. The respondents, however, have not led any documentary evidence either to prove the monthly income of the deceased and/or to show that the income of the deceased as projected by appellant No.1, was exaggerated. The record, however, reveals that though the deceased was running a flour mill and was

an agriculturist also but he was not an income tax assessee.

Keeping in view the facts and circumstances of the case, it appears that the deceased, having regard to the potentiality of his business/farming activities, must have been earning about Rs.2,000/- per month. Apart from one daughter of marriageable age i.e. appellant No.2, he had three other minor children also. The deceased was also maintaining his old parents, namely, claimant nos.6 and 7, though his mother died during the pendency of the claim petition. It, thus, appears that the deceased must have been contributing towards the maintenance of his family members a sum of Rs.18,000/- per year. The deceased was of 40 years of age at the time of his death, as mentioned in the post-mortem report (Ex.P-2). In the facts and circumstances, a multiplier of 15 appears to be just and reasonable.

Consequently, the appellants are held entitled to a compensation of Rs.2,70,000/-. They shall also be entitled to interest at the rate of 6% per annum with effect from the date of filing of the claim petition till its actual realisation, apart from the costs of this appeal which are assessed to be Rs.2500/-

August 23, 2006 **(SURYA KANT)**
poonam **JUDGE**